

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LAWRENCE ARMSTRONG,

Defendant-Appellant.

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UNPUBLISHED

October 7, 2003

No. 238863

Wayne Circuit Court

LC No. 01-004121-01

Before: Whitbeck, C.J., and Gage and Zahra, JJ.

WHITBECK, C.J. (*concurring*).

I concur in the majority opinion. I write separately to indicate my partial disagreement with the majority's formulation of the hearsay objection issue. Armstrong objected on hearsay grounds to statements made by Marcel Smith to officers Walker and Crosby in his presence. Smith stated that, "They didn't need the police. They'd handle it themselves."

The majority states that, under MRE 803(3), statements showing the state of mind of the declarant are admissible when that state of mind is pertinent to the matters at issue. I agree that this is certainly true. However, I do not necessarily agree that Smith's statement was an expression of *his* state of mind at the time it was made. Rather, it appears to be an expression, at least in part, of Smith's evaluation of *Armstrong's* state of mind. I am cognizant of the fact that Smith is Armstrong's brother and that the word "they" in Smith's statement may have referred to both himself *and* Armstrong. This presents the rather interesting question of whether, when a declarant makes a statement to third parties that could be interpreted as expressing a collective state of mind, testimony of such third parties about that statement is admissible under MRE 803(3) as an exception to the hearsay rule because it is a statement of the *declarant's* state of mind.

Fortunately, we need not reach this question. I agree with the majority that, even assuming the admission of the evidence constituted error, it does not merit reversal because Armstrong has not demonstrated how this error affected his substantial rights.

/s/ William C. Whitbeck